THE NEW INHERITANCE TAX LAW OF VIRGINIA.

No subject is of more vital interest to the intelligent citizens of Virginia than tax laws, and especially new tax laws. The Inheritance Tax Law passed at the last session of the Virginia Legislature, being Chapter 484 of the Acts of the Assembly of 1916, is of sufficient importance to justify some cursory observations in regard to it. It is impossible to anticipate all the questions to which a statute of this character may give rise, but there are some which are apparent on the surface, and the object of this article is to do no more than to call attention to these. Under the following numbered heads these observations will be made.

(1) The act in question by a strange inadvertence makes no reference whatever to a previous act on the same subject passed by the same Legislature about a month earlier, to be found in Chapter 80 of the same volume. The later act must, therefore, repeal by necessary implication the former act, except as to such portions, possibly, of the first act as are not inconsistent with the later. The two acts are intended for the same general purpose and cover practically the same ground. They were designed to supersede and enlarge the prior statutes known as "the collateral inheritance laws," the last of which may be seen in Chapter 148, Acts of 1910, imposing a death tax of 5% on legacies or devises to collateral relatives of the deceased or to strangers, and likewise on property passing from an interstate to persons of these classes. But it will be observed that the first inheritance tax of 1916 went into effect on February 29th, 1916, and remained in force until June 17th, 1916, when the later act became effective.

(2) The act under discussion (Chapter 484, Acts 1916) is notable for the severity if not the ferocity of the tax rates sought to be imposed. The rate rises very rapidly with the size of a dead man's estate passing to non-favored classes: From $15,000.00 to $50,000.00 the tax is at the primary rate of 5% fixed for the first $15,000.00 of property, from $50,000.00 up to $250,000.00, the tax is 10%, from $250,000.00 up to $1,000,000 the tax is 20%. If this statute stands the test of the courts it will serve as notice to all men of means to move out of Virginia be-

fore they die, if they intend to leave, or must of necessity leave, their estates to persons not within the favored classes mentioned in the act.

(3) Legacies and devises to father, mother, husband, wife, brother, sister, lineal descendants, grand-father, and grand-mother are put in a favored class. The draughtsman of the act possibly intended to make the inheritance tax on this favored class less than that placed on nieces and nephews, first cousins, other collaterals and strangers, but it seems doubtful whether he wholly succeeded. The impression prevails with some persons that the tax on the favored class is only 1% upon the excess over $15,000.00. As a matter of fact the favored class seems clearly to be taxed at the rate of 5% on the first $15,000.00, exactly as is the non-favored class, but legacies and devises in excess of $15,000.00 given to the favored class, pay on the excess over $15,000.00 only 1%, and are not subject to the merciless rates exacted of large estates passing to the non-favored class. The property of an interstate is taxed upon the same principle as that passing from a testator. To levy a tax of $750.00 on an estate of only $15,000.00 passing from a dead husband to his widow and children is excessive.

(4) The difficulties and uncertainties of the former collateral inheritance tax laws are embodied in the present statute. One of these difficulties was to know how to deal with life estates and remainders for which no provision was made. A legacy might be given to a life tenant of a class not taxed at all with remainder to a collateral kinsman liable to the tax, or vice-versa, and the statutes provided no method whatever of meeting this difficulty, but left the courts, officials, and private citizens to cross the bridge the best way they could. The earlier inheritance tax law of 1916 (Chapter 80, Acts 1916) contains a provision intended to meet in part the difficulty just mentioned, but since the whole of the former act seems to be repealed by the later act, the provision for computing the tax upon life estates contained in the former act has been wiped out with the whole act. The trunk of the tree has been cut down and the branches of the tree fall along with it.

(5) The act in question imposes, as did the prior acts, upon

the judges of the probate courts of the larger cities and upon the clerks of the circuit courts clothed with probate jurisdiction, the anomalous function of acting as tax assessors, requiring them, however, to determine the inheritance tax to be paid not upon all estates passing, but only upon estates passing "by will or administration," and the order entered by the court or clerk fixing the tax is required to be certified to the local treasurer of the county or city and to the State Auditor at Richmond. The personal representative of the decedent is required to pay out of the funds in his hands the whole of said tax, excepting, of course, the tax on real estate over which he has no control which must be paid by the heir or devisee. Therefore, as to estates passing "by will or administration" the statute provides the necessary machinery for assessing the tax, but this is all the machinery that the statute provides for assessment.

(6) It is true that the statute in question lays a tax not only on personal and real estate passing by will, but also on that passing by the statutes of descents and distribution; but so far as real estate is concerned which passes not *"by will or administration"* but by the statutes of descents, the statute provides no method whatever for the assessment of the tax. In order for a tax to be valid the statute must create some assessing tribunal which determines the value of the property liable to the tax and the amount of the tax upon such values; and without the existence of such a tribunal the tax law cannot be executed and is null and void. It seems, therefore, that although the statute in question imposes a tax upon lands passing by descent, and makes the tax a lien on the land, the statute, so far as real estate passing by descent is concerned, has no effect. Under the former collateral inheritance tax laws persons who were liable to the tax on receiving lands by descent would go from official to official asking vainly whose business it was to fix the tax so that it could be paid; and this same omission still remains in the present act, though if the act is unconstitutional in this respect the tax-payer has no special cause of grievance.

(7) The subject mentioned under the last head raises the further question whether the whole act under discussion is not null and void as being an unwarranted and unreasonable discrimina-

tion against persons receiving estates "by will or administration," who are taxed heavily, in favor of persons receiving lands by descent who are not taxed at all. The Legislature of Virginia is clothed with power to make reasonable and fair classifications of subjects for purposes of taxation, but this power cannot be exercised in a whimsical fashion, and it will be hard to justify upon any sound basis an inheritance tax law aimed only at estates passing "by will or administration," but exempting that large class of real property which passes every year to the heirs of landholders dying intestate.

(8) If the objections to the validity of the present act (Chapter 484, of Acts 1916), which have been mentioned are sound, they apply also to Chapter 80 of Acts 1916 and to Chapter 148 of Acts 1910.

The act in question has other features which might be discussed, but it is my purpose to call attention only to the prominent ones.

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